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WMC MORTGAGE LLC as successor-in-interest to WMC MORTGAGE CORP.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

11 DONNIE KNAULS, ) CV NO. 07CV2233-DMS (NLS)  
12 Plaintiff, )  
13 vs. ) NOTICE OF MOTION AND MOTION  
14 WMC MORTGAGE; ASC/AMERICA'S ) OF WMC MORTGAGE LLC FOR  
SERVICING COMPANY; MORTGAGE ) COURT ORDER REQUIRING MORE  
LENDERS NETWORK USA INC; ) DEFINITE STATEMENT FROM  
COUNTRYWIDE HOME LOANS ) PLAINTIFF  
15 ) [F.R.C.P. Rule 12(e)]  
16 Defendants. ) [Oral Argument Not Required]  
)

Honorable Dana M. Sabraw

21 TO THE HONORABLE DANA M. SABRAW, UNITED STATES DISTRICT JUDGE; TO  
22 PLAINTIFF, AND TO ALL INTERESTED PARTIES:

23 PLEASE TAKE NOTICE that on May 23, 2008, at 1:30 p.m., or as soon thereafter as the  
24 matter may be heard, in Courtroom 10 of the above-entitled Court located at 880 Front Street,  
25 San Diego, California 92101, WMC Mortgage LLC as successor-in-interest to WMC Mortgage  
26 Corp. ("WMC") for itself alone and for no other defendants, will move the Court for an Order  
27 Requiring a More Definite Statement from plaintiff, pursuant to F.R.C.P. § 12(e) because plaintiff's  
28 complaint is completely unintelligible, vague and ambiguous. Plaintiff has mis-cited the United

1 United States Code section under which he seeks relief. WMC is informed and believes that plaintiff  
 2 intended to sue under **15 U.S.C § 1635(a)** and not **5 U.S.C. § 1635(a)**, speaks of the exercise of his  
 3 rights under the "Bankruptcy Reform Act" (see, Amended Complaint, p. 3, ll. 16-17, inclusive),  
 4 "Supplemental Rules of Admiralty... the Law of Nations, [and the] Law and Justice" (see, Amended  
 5 Complaint, p. 3, ll. 25-26), although it is entirely unclear how these "rules" or "codes" apply to an  
 6 apparent Regulation Z, Truth in Lending cause of action. The Plaintiff cites the principals of GAAP,  
 7 HJR-192, and the UCC (see, Amended Complaint, p. 7, l. 14), and that he is a party to the  
 8 "international maritime contract" (see, Amended Complaint, p. 7, l. 19), none of which are  
 9 cognizable theories upon which liability can be attached as against WMC. The Complaint is so  
 10 indefinite that WMC cannot ascertain the nature of the claim being asserted. WMC cannot apprise  
 11 itself of what allegations it must defendant itself, or what claims are actually being asserted by the  
 12 plaintiff.

13 The Motions are based upon this Notice, the attached Memorandum of Points and  
 14 Authorities, the court file herein, and on such other oral and documentary evidence as may be  
 15 presented at the time of the hearing.

16 WHEREFORE, WMC respectfully requests that the Court order plaintiff to provide a more  
 17 definite statement under Federal Rule of Civil Procedure 12(e), and grant such other and further  
 18 relief as the Court deems just and proper.

19 Dated: April 1, 2008

Respectfully submitted,

20  
21 CUNNINGHAM & TREADWELL

22 By:

23  
24 DAVID S. BARTELSTONE  
25 Attorneys for Defendant,  
26 WMC MORTGAGE LLC as successor-in-  
27 interest to WMC MORTGAGE CORP.  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

3 Defendant, WMC Mortgage LLC as successor-in-interest to WMC Mortgage Corp., is  
4 believed to have been sued in this action relating to its loan of \$344,000.00 to plaintiff, Donnie  
5 Knauls, on December 29, 2006, and relating to the real property located at 2360 Cypress Avenue,  
6 Lemon Grove, CA , 91945 ("subject property"). It is believed that WMC is being sued for violations  
7 of "Regulation Z Truth and Lending Action, Title 5 [sic] U.S.C. § 1635(a), Title 12 C.F.R.  
8 226.23(D)(I)), although due to the completely unintelligible nature of the Amended Complaint,  
9 WMC cannot apprise itself of what violations it is alleged to have committed and to what it must  
10 defend itself against.

11 It appears at some points in the Amended Complaint that WMC is being sued under  
12 Bankruptcy theories (see, Amended Complaint, p. 3, ll. 16-17, inclusive), admiralty and maritime  
13 theories (see, Amended Complaint, p. 3, ll. 25-26; p. 7, l. 19 ), accounting principals and codes  
14 applicable to the sale of goods (UCC) (see, Amended Complaint, p. 7, l. 14).

## II. ARGUMENT

**A. Rule 12(e)**

17 A Rule 12(e) motion is proper only where the complaint is so indefinite that the defendant  
18 cannot ascertain the nature of the claim being asserted. In such cases, defendant cannot reasonably  
19 be expected to frame a proper response. (See, Famolare, Inc. v. Edison Bros. Stores, Inc. (ED CA  
20 1981) 525 F.Supp. 940, 949; Cellars v. Pacific Coast Packaging, Inc. (ND CA 1999) 189 FRD 575,  
21 578.) A Rule 12(e) motion is a proper means of enforcing Rule 8's requirement that pleadings be  
22 "clear and concise." (Anderson v. District Bd of Trustees of Central Florida Comm. College (11<sup>th</sup>  
23 Cir. 1996) 77 F.3d 364, 366.)

24 It appears at some points in the Amended Complaint that WMC is being sued under  
25 Bankruptcy theories (see, Amended Complaint, p. 3, ll. 16-17, inclusive), admiralty and maritime  
26 theories (see, Amended Complaint, p. 3, ll. 25-26; p. 7, l. 19 ), accounting principals and codes  
27 applicable to the sale of goods (UCC) (see, Amended Complaint, p. 7, l. 14). This is despite the  
28 Court clearly ordering that any amended complaint of the plaintiff must contain a short and precise

1 statement of the Regulation Z, Truth in Lending violations that the plaintiff claims WMC committed.  
2 Clearly the plaintiff has not complied with the Court's previously ruling on WMC's demurrer to the  
3 Complaint, and because plaintiff's Amended Complaint again fails to set forth a cognizable theory of  
4 liability as against WMC, the Amended Complaint, and this case in its entirety, should be dismissed  
5 with prejudice.

6                             **III. CONCLUSION**

7                             The Amended Complaint lacks any sufficiency, as a matter of law, to support the relief  
8 requested by plaintiff, and WMC prays that this court dismiss this action in its entirety with prejudice  
9 as it appears that it would be an effort in futility to attempt to obtain a more definite statement  
10 pursuant to Federal Rule of Civil Procedure 12(e).

11

12 Dated: April 1, 2008

CUNNINGHAM & TREADWELL

13  
14 By:

DAVID S. BARTELSTONE  
Attorneys for Defendant,  
WMC MORTGAGE LLC as successor-in-  
interest to WMC MORTGAGE CORP.

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